

# SENATE JOURNAL

OF THE

## IDAHO LEGISLATURE

FIRST REGULAR SESSION  
FIFTY-SEVENTH LEGISLATURE

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**THIRTY-NINTH LEGISLATIVE DAY  
THURSDAY, FEBRUARY 13, 2003**

Senate Chamber

President Pro Tempore Geddes called the Senate to order at 11:15 a.m.

Roll call showed all members present except Senator Gannon, absent and formally excused by the Chair; and Senators Hill, Marley, Noh, Schroeder, and Stennett, absent and excused.

Prayer was offered by Chaplain Gene Arnold.

The Pledge of Allegiance was led by Michael Infanger, Page.

The Senate advanced to the Third Order of Business.

### Reading and Correction of the Journal

Senators Hill, Schroeder, and Stennett were recorded present at this order of business.

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of February 12, 2003, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Sixth Order of Business.

### Reports of Standing Committees

Senators Marley and Noh were recorded present at this order of business.

February 12, 2003

The HEALTH AND WELFARE Committee reports out **S 1067**, **S 1068**, and **S 1073** with the recommendation that they do pass.

BRANDT, Chairman

**S 1067**, **S 1068**, and **S 1073** were filed for second reading.

February 12, 2003

The HEALTH AND WELFARE Committee reports out **S 1074** with the recommendation that it do pass.

BRANDT, Chairman

**S 1074** was filed for second reading.

February 12, 2003

The JUDICIARY AND RULES Committee reports out **H 3**, as amended, and **H 72** with the recommendation that they do pass.

DARRINGTON, Chairman

**H 3**, as amended, and **H 72** were filed for second reading.

February 12, 2003

The STATE AFFAIRS Committee reports it has had under consideration the Gubernatorial appointment listed below and the Committee recommends that said appointment be confirmed by the Senate:

Blanche M. Weber to the Idaho Bingo-Raffle Advisory Board, term to expire January 7, 2005.

SORENSEN, Chairman

The Gubernatorial appointment was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

February 13, 2003

The LOCAL GOVERNMENT AND TAXATION Committee reports out **H 113** with the recommendation that it be referred to the Fourteenth Order of Business for amendment.

BUNDERSON, Chairman

There being no objection, **H 113** was referred to the Fourteenth Order of Business, General Calendar.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eighth Order of Business.

### Messages from the Governor

February 12, 2003

The Honorable James E. Risch  
President of the Senate  
Idaho Legislature

Dear Mr. President:

I have the honor to inform you that Gary Chamberlain of Challis, Idaho, was appointed as a member of the Idaho Water

Resource Board to serve a term commencing January 1, 2003, and expiring January 1, 2007.

This appointment was made subject to confirmation by the Senate. Notice of appointment is hereby given.

Sincerely,  
/s/ Dirk Kempthorne  
Governor

The correspondence was ordered filed in the office of the Secretary of the Senate.

The Gubernatorial appointment was referred to the Resources and Environment Committee.

February 12, 2003

The Honorable James E. Risch  
President of the Senate  
Idaho Legislature

Dear Mr. President:

I hereby advise you that pursuant to Article IV, Section 10 of the *Idaho Constitution*, I have allowed to become law, without my approval, the following Senate Bill, to wit:

#### **S 1025**

the same having arrived in the Office of the Governor at the hour of 1:15 p.m. on February 6, 2003.

Senate Bill **1025** is a supplemental appropriation bill for the Idaho Department of Agriculture. This account has historically and by statute been paid with deficiency warrants reimbursed from the General Fund. This past fiscal year, the Department of Agriculture expended \$104,000 in funds from this account for Mormon cricket baiting, \$9,900 for a gypsy moth survey, and \$15,100 for an exotic pest survey. The Department made the supplemental appropriation request to the Joint Finance and Appropriation Committee (JFAC) with the expectation that these expenditures would be replenished by the General Fund.

Rather than directly address the Department's request, this legislation proposes to reimburse the Department from their own dedicated pesticide fund account, "notwithstanding" that *Idaho Code* Section 22-3415 requires that all fees collected for this account "*shall...be credited to the pesticide fund to be used only for carrying out the provisions of this act.*" (Emphasis added.)

The approach taken in this legislation is problematic. I acknowledge that the Department has already tapped this fund for a portion of the last two holdbacks I requested under the *Constitution*. However, the dedicated fund only has 8-9 months of reserve with no General Fund replenishment in sight.

I am not signing this bill into law because it is representative of a gradual change in the way our State should be conducting its business.

First, Senate Bill **1025** reinforces a troubling trend in our budgeting process that dedicated funds generated by an organic act of statute can be overcome by a "notwithstanding" clause in an appropriations bill. This bill has impliedly amended a state statute without having been accorded notice and hearing through the usual and customary law making process.

Second, this particular dedicated account is required *by law* to be funded by user fees of the specified regulated community. Treatment of these funds like other General Fund accounts that can be shifted through the appropriations process creates an unfair burden on those who are required to pay their fees into the fund by law and who have a reasonable expectation of services to be rendered from those dedicated funds.

For example, I am advised that there has been a strong objection to Senate Bill **1024**, a supplemental appropriation bill for predator control which shifted user fees out of the dedicated account into the General Fund. I will continue to be cautious with future efforts to shift funds from dedicated accounts for purposes not recognized in the original organic statute.

Third, if the Legislature is going to change the method by which a dedicated account is expended, there should be adequate notice to the Office of the Governor and Department of Agriculture as to its specific intentions.

On these bases, I am allowing Senate Bill **1025** to become law without my signature.

Sincerely  
/s/ Dirk Kempthorne  
Governor

The correspondence was ordered filed in the Office of the Secretary of the Senate.

The Senate advanced to the Ninth Order of Business.

#### **Messages from the House**

February 12, 2003

Mr. President:

I transmit herewith **H 9**, as amended, **H 11**, **H 138**, **H 109**, **H 204**, **H 89**, as amended, **H 111**, as amended, and **H 110**, as amended, which have passed the House.

JUKER, Chief Clerk

**H 9**, as amended, **H 11**, **H 138**, **H 109**, **H 204**, **H 89**, as amended, **H 111**, as amended, and **H 110**, as amended, were filed for first reading.

February 12, 2003

Mr. President:

I transmit herewith Enrolled **H 91** and **H 33** for the signature of the President.

JUKER, Chief Clerk

The President Pro Tempore signed Enrolled **H 91** and **H 33** and ordered them returned to the House.

The Senate advanced to the Tenth Order of Business.

### **Motions and Resolutions**

The President Pro Tempore announced that **HJM 1** was before the Senate for final consideration, the question being, "Shall the memorial be adopted?"

On motion by Senator Burkett, seconded by Senator Davis, **HJM 1** was adopted by voice vote, title was approved, and the memorial ordered returned to the House.

The President Pro Tempore announced that **HCR 8** was before the Senate for final consideration, the question being, "Shall the resolution be adopted?"

On motion by Senator Burkett, seconded by Senator Little, **HCR 8** was adopted by voice vote, title was approved, and the resolution ordered returned to the House.

The President Pro Tempore announced the Transportation Committee report relative to the Gubernatorial appointment of Robert Hoff was before the Senate for final consideration, the question being, "Shall the report be adopted?"

On motion by Senator Keough, seconded by Senator Calabretta, the Gubernatorial appointment of Robert Hoff as a member of the Idaho Aeronautics Advisory Board was confirmed by voice vote.

The President Pro Tempore declared the report adopted and directed the Secretary of the Senate to prepare a letter of the Gubernatorial appointment confirmation for his signature, attested to by the Secretary, to be transmitted to the Governor informing him of the action of the Senate.

The Senate advanced to the Eleventh Order of Business.

### **Introduction, First Reading, and Reference of Bills, House Petitions, Resolutions, and Memorials**

#### **S 1115**

#### **BY JUDICIARY AND RULES COMMITTEE**

##### **AN ACT**

RELATING TO MODIFICATION OF PROVISIONS FOR MAINTENANCE AND SUPPORT; AMENDING SECTION 32-709, IDAHO CODE, TO PROVIDE THAT THE DECREE IS A FINAL JUDGMENT AS TO ANY INSTALLMENT OR PAYMENT OF MONEY THAT HAS ACCRUED UP TO THE TIME EITHER PARTY MAKES A MOTION TO SET ASIDE, ALTER OR MODIFY THE DECREE, AND THE COURT DOES NOT HAVE THE POWER TO SET ASIDE, ALTER OR MODIFY SUCH DECREE, OR ANY PORTION THEREOF, THAT PROVIDES FOR ANY PAYMENT OF MONEY, EITHER FOR MINOR CHILDREN OR THE SUPPORT OF A PARTY, THAT HAS ACCRUED PRIOR TO THE FILING OF SUCH MOTION WITH AN EXCEPTION AND TO MAKE A TECHNICAL CORRECTION.

#### **S 1116**

#### **BY STATE AFFAIRS COMMITTEE**

##### **AN ACT**

RELATING TO THE PUBLIC UTILITIES COMMISSION; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-307A, IDAHO CODE, TO PROVIDE FOR A PUBLIC HEARING ON RATE INCREASES PRIOR TO THE COMMISSION RECEIVING THE COMMISSION STAFF'S RECOMMENDATION; AND DECLARING AN EMERGENCY.

#### **S 1117**

#### **BY STATE AFFAIRS COMMITTEE**

##### **AN ACT**

RELATING TO PAY GRADES, MERIT INCREASES AND OTHER COMPENSATION FOR CLASSIFIED STATE EMPLOYEES; AMENDING SECTION 67-5309C, IDAHO CODE, TO REVISE HOW BONUSES ARE AWARDED AND TO REQUIRE EACH AGENCY TO MAINTAIN A RECORD, AVAILABLE FOR PUBLIC REVIEW AND INSPECTION, OF ALL BONUSES AWARDED BY AGENCY AND CLASSIFICATION.

#### **S 1118**

#### **BY STATE AFFAIRS COMMITTEE**

##### **AN ACT**

RELATING TO CREATION OF SUCCESS SCHOLARSHIPS FOR IDAHO STUDENTS IN POSTSECONDARY INSTITUTIONS IN IDAHO; REPEALING SECTIONS 33-4303 THROUGH 33-4315, IDAHO CODE; AMENDING CHAPTER 43, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-4304, IDAHO CODE, TO STATE THE OBJECTIVE; AMENDING CHAPTER 43, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-4305, IDAHO CODE, TO DEFINE TERMS; AMENDING CHAPTER 43, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-4306, IDAHO CODE, TO DEFINE STUDENT ELIGIBILITY; AMENDING CHAPTER 43, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-4307, IDAHO CODE, TO SPECIFY THE DURATION OF A SUCCESS SCHOLARSHIP; AMENDING CHAPTER 43, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-4308, IDAHO CODE, TO SPECIFY THE AMOUNT OF THE SCHOLARSHIP; AMENDING CHAPTER 43, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-4309, IDAHO CODE, TO GOVERN ADMINISTRATION OF THE SUCCESS SCHOLARSHIP; AMENDING CHAPTER 43, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-4310, IDAHO CODE, TO GOVERN TERMINATION OF SCHOLARSHIPS; AMENDING CHAPTER 43, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-4311, IDAHO CODE, TO PROVIDE CREATION OF THE SUCCESS SCHOLARSHIP FUND; AMENDING SECTION 67-7434, IDAHO CODE, TO PROVIDE A DISTRIBUTION OF LOTTERY DIVIDENDS TO THE SUCCESS SCHOLARSHIP FUND AND TO STRIKE OBSOLETE LANGUAGE; AMENDING SECTION 33-2101A, IDAHO CODE, TO DELETE CODE REFERENCES; AND AMENDING SECTION 33-4604, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES.

**S 1119**  
**BY STATE AFFAIRS COMMITTEE**  
**AN ACT**

RELATING TO THE IDAHO EMPLOYER ALCOHOL AND DRUG-FREE WORKPLACE ACT; AMENDING THE HEADING FOR CHAPTER 17, TITLE 72, IDAHO CODE; AMENDING SECTION 72-1701, IDAHO CODE, TO REMOVE LANGUAGE REFERENCING ONLY PRIVATE EMPLOYERS; AMENDING SECTION 72-1702, IDAHO CODE, TO REMOVE LANGUAGE REFERENCING ONLY PRIVATE EMPLOYERS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 72-1703, 72-1704, 72-1705 AND 72-1706, IDAHO CODE, TO REMOVE LANGUAGE REFERENCING ONLY PRIVATE EMPLOYERS; AMENDING SECTION 72-1707, IDAHO CODE, TO REMOVE LANGUAGE REFERENCING ONLY PRIVATE EMPLOYERS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 72-1708, IDAHO CODE, TO REMOVE LANGUAGE REFERENCING ONLY PRIVATE EMPLOYERS AND TO RESTRICT APPLICATION OF THE SECTION; AMENDING SECTIONS 72-1710 AND 72-1711, IDAHO CODE, TO REMOVE LANGUAGE REFERENCING ONLY PRIVATE EMPLOYERS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 72-1712, IDAHO CODE, TO REMOVE LANGUAGE REFERENCING ONLY PRIVATE EMPLOYERS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 72-1714, IDAHO CODE, TO REMOVE LANGUAGE REFERENCING ONLY PRIVATE EMPLOYERS; AMENDING SECTION 72-1715, IDAHO CODE, TO LIMIT APPLICATION OF THE SECTION; AND AMENDING SECTION 72-1716, IDAHO CODE, TO PROVIDE THAT THE STATE OF IDAHO OR ANY POLITICAL SUBDIVISION OF THE STATE THAT CONDUCTS DRUG AND ALCOHOL TESTING OF ALL EMPLOYEES AND PROSPECTIVE EMPLOYEES FOR WHOM SUCH TESTING IS NOT CONSTITUTIONALLY PROHIBITED SHALL QUALIFY FOR AND MAY BE GRANTED THE EMPLOYER PREMIUM REDUCTION.

**S 1115, S 1116, S 1117, S 1118, and S 1119** were introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

**H 9**, as amended, and **H 11**, by Mr. Speaker, were introduced, read the first time at length, and referred to the Commerce and Human Resources Committee.

**H 138** and **H 204**, by Transportation and Defense Committee, were introduced, read the first time at length, and referred to the Transportation Committee.

**H 109**, by Agricultural Affairs Committee, was introduced, read the first time at length, and referred to the Agricultural Affairs Committee.

**H 89**, as amended, and **H 111**, as amended, by State Affairs Committee, were introduced, read the first time at length, and referred to the State Affairs Committee.

**H 110**, as amended, by State Affairs Committee, was introduced, read the first time at length, and referred to the Resources and Environment Committee.

The Senate advanced to the Twelfth Order of Business.

**Second Reading of Bills**

**H 130**, by Revenue and Taxation Committee, was read the second time at length and filed for third reading.

**S 1052, S 1054, and S 1055**, by Transportation Committee, were read the second time at length and filed for third reading.

The Senate advanced to the Thirteenth Order of Business.

**Third Reading of Bills**

**S 1069** was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Noble arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Burkett, Calabretta, Compton, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, McKenzie, McWilliams, Noble, Noh, Pearce, Schroeder, Sorensen, Stegner, Stennett, Sweet, Werk. Total - 25.

NAYS--Bunderson, Burtenshaw, Cameron, Darrington, Davis, Geddes, Marley, Richardson, Williams. Total - 9.

Absent and excused--Gannon. Total - 1.

Total - 35.

Whereupon the President Pro Tempore declared **S 1069** passed, title was approved, and the bill ordered transmitted to the House.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

**Miscellaneous Business**

On motion by Senator Davis, seconded by Senator Stennett, by voice vote the Senate adjourned at 12:15 p.m. until the hour of 11:15 a.m., Friday, February 14, 2003.

ROBERT E. GEDDES, President Pro Tempore

Attest: JEANNINE WOOD, Secretary